

AUG 21 2006**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LESLIE ERIC ACKERMAN,

Defendant - Appellant.

No. 05-30044

D.C. No. CR-04-00108-SEH

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Argued and Submitted August 15, 2006
Seattle, Washington

Before: REAVLEY,^{**} PREGERSON, and CALLAHAN, Circuit Judges.

Leslie Eric Ackerman appeals his 180-month sentence for aggravated sexual assault. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} The Honorable Thomas M. Reavley, Senior United States Circuit Judge for the Fifth Circuit, sitting by designation.

Ackerman's sentence was reasonable. The district court articulated circumstances that, under 18 U.S.C. § 3553(a), justified a sentence in excess of the advisory Guidelines range. The "appalling" nature of the crime, the very tender age of the victim, the repeated nature of the abuse, and the incalculable harm to the victim all support the district court's conclusion that Ackerman was particularly "dangerous" and that an above-Guidelines sentence was required to appropriately punish him and to protect the public. *See United States v. Mix*, 450 F.3d 375 (9th Cir. 2006), *amended and superseded by* --- F.3d ----, 2006 WL 2268636 (9th Cir. Aug. 9, 2006) (approving as reasonable an above-guideline sentence where the district court found that "the guidelines [did] not sufficiently provide for the heinous, brutal, continued nature [of the violence against] the victims"); *see also United States v. Mohamed*, --- F.3d ----, 2006 WL 2328722, at *7 (9th Cir. Aug 11, 2006) (approving an above-guidelines sentence where the district court noted that the advisory guidelines did not "accurately reflect the seriousness of [the defendant's] crime).

Ackerman also argues that application of *United States v. Booker*, 543 U.S. 220 (2006), to pre-*Booker* conduct constitutes an ex post facto violation. This argument is foreclosed by *United States v. Staten*, 450 F.3d 384, 389 (9th Cir. 2006).

Accordingly, we AFFIRM Ackerman's sentence.